

JOINT REGULATIONS FOR HANDICAPPED CHILDREN

GOVERNMENT CODE, TITLE 2, CHAPTER 26.5

DIVISION 9. JOINT REGULATIONS FOR HANDICAPPED CHILDREN

a) Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulations Are Intended to Address

These proposed regulations implement, interpret, and make specific Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code relating to interagency responsibilities for providing services to children with disabilities.

The intent of these proposed regulations is to assure conformity with the federal Individuals with Disabilities Education Act or IDEA, (20 U.S.C. Sections 1400 et seq.), its implementing regulations, including Sections 76.1 et seq., and 300.1 et seq. of Title 34 of the Code of Federal Regulations. These proposed regulations are supplemental to, and in the context of, federal and state laws and regulations relating to interagency responsibilities.

Chapter 26.5, Section 7587, mandated the development of regulations for each state department named in this chapter. Due to the interagency nature of the proposed regulations, it was necessary for the state departments to collaborate on the development of the proposed regulations. In addition, the legislature mandated that proposed regulations were to be developed with the maximum feasible opportunity for public participation and comments. During the development of these proposed regulations there have been various work groups and advisory bodies who have made regulatory suggestions.

Besides the legislative mandate, the California Department of Education (CDE) was party to the Butterfield vs. Honig law suit in 1989. The resulting decision made the CDE responsible for insuring that the terms of the Butterfield vs. Honig agreement were considered in the development of the proposed regulations for Chapter 26.5 of the Government Code.

Before the United States Office of Special Education Programs (OSEP) would accept the CDE state plan they required that regulations guaranteeing occupational therapy and physical therapy services to eligible disabled pupils be proposed. Concerns of OSEP are reflected in a CDE Program Advisory dated September 6, 1991, and also in the proposed regulations.

Current statute addresses, in part, interagency responsibilities for providing services to children with disabilities. These proposed regulations are necessary to clarify consistent procedures and criteria in the administration of related services to insure that effected state and local agencies and interested persons are informed of these procedures.

These proposed regulations reflect the change in name of the federal legislation from Education for all Handicapped Children Act of 1975 to Individuals with Disabilities Education Act of 1990 or IDEA. At this time, a change in nomenclature pursuant to IDEA alters the title to "Children with Disabilities" and deletes all references to "individuals with exceptional needs."

Emergency regulations were adopted in 1986 under the title, Division 9, Joint Regulations for Handicapped Children, Chapter 1, Interagency Responsibilities for Providing Services to Handicapped Children. The Legislature granted extensions of this emergency regulatory authority in the budget act annually to allow for the development of the permanent regulations until this year.

The proposed regulations reflect changes in California statute affecting Government Code Chapter 26.5 pursuant to: Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985; Chapter 1133, Statutes of 1986; Chapter 677, Statutes of 1989; Chapter 182, Statutes of 1990; Chapter 223, Statutes of 1991; and Chapter 654, Statutes of 1996. These proposed regulations also include concerns expressed by the public users of the program regarding past program implementation.

These proposed regulations also reflect changes in Chapter 6 of the Welfare and Institutions Code: Chapter 1274, Statutes of 1985; Chapter 1294, Statutes of 1989; Chapter 46, Statutes of 1990; Chapter 737, Statutes of 1990.

The extensive duplication of statute throughout these proposed regulations is necessary due to the interagency nature of these proposed regulations. Many staff members at the various state and county departments have little knowledge of statutes that pertain to other departments. The audience for these proposed regulations also includes parents and advocates who may use these proposed regulations as the basis for a complaint and due process.

b) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

ADOPTION OF TITLE 2, DIVISION 9, CHAPTER 1, CALIFORNIA CODE OF REGULATIONS

Chapter 1. Interagency Responsibility for Providing Services to Children With Disabilities

Article 1. General Provisions

SECTION 60000 SCOPE

This section identifies the individuals to whom the provisions of this chapter apply and clarifies that the provisions of this chapter are intended to function in conjunction with state and federal laws and regulations regarding children with disabilities.

These proposed regulations reflect the federal Education for all Handicapped Children Act of 1975

(PL 94-142) as changed by the Individuals with Disabilities Education Act of 1990 and as reauthorized in 1997 (PL 105-17).

SECTION 60010 EDUCATION DEFINITIONS

The provisions of this section establish definitions for the terms used by the Department of Education.

These definitions are necessary to insure that the terminology in the proposed regulations is consistent and will be understandable to pupils who are eligible for services, their parents and the state and local agency personnel responsible for providing the services.

Subsection (a) clarifies the meaning of simple or common words found in the chapter, the application of which may otherwise be confusing. This definition is included to assist the local agencies and the public in understanding these proposed regulations.

Subsection (b) clarifies the term "administrative designee" for non-education agency personnel having a responsibility to participate in the individualized education program (IEP) team meeting. This definition is also included to assist the public in understanding the specific role of the professional who is responsible for educational decisions.

Subsection (c) defines the meaning of the term "assessment" and references those sections of the Education Code that govern the assessment of children identified as pupils with a disability. This definition is included to assist community mental health service staff in understanding the nature of an educational assessment.

Subsection (d) defines the meaning of the term "assessment plan" and references that section of the law specifying the conditions to be observed and the procedures to be followed in the development of the assessment plan. This definition is included to alert non-education agencies before they assess a pupil that they are subject to education's procedural requirements when preparing assessment plans for related services pursuant to this chapter.

Subsection (e) clarifies the term "confidentiality" to alert all professionals that implementation of the law requires each agency to conform with the confidentiality rules of the other agencies. These confidentiality rules provide not only for protection of information but also for access to information under certain circumstances. Professional staff in the fields of education, health, mental health and social services currently are familiar with the provisions of confidentiality governing their own separate areas of responsibility. The definition serves to inform all agency professional staff of their new, broader, procedural responsibilities in the area of confidentiality. Medical and clinical records are included in this list of records to be kept confidential to conform with confidentiality requirements in the Welfare and Institutions Code that pertain to these records.

Subsection (f) defines the term "county superintendent of schools" to conform with the Education Code. The county superintendent has responsibilities under this Chapter. This definition is included to inform non-education agencies about the specific role of this administrator.

Subsection (g) clarifies that the term "day" in this Chapter means calendar day rather than work day. This definition is included to inform non-education agencies of the educational definition of "day."

Subsection (h) defines the term "designated instruction and services" and clarifies the differences between "designated instruction and services" and "related services." These phrases are sometimes used interchangeably. This definition is included because the use of the two terms has greatly confused both non-educational professionals and lay persons.

Subsection (i) defines the term "individualized education program" or "IEP." The term references those pertinent code sections that must be adhered to when preparing an IEP. This clarification is necessary to assist non-education agencies in understanding their responsibilities under Chapter 26.5, Division 7 of Title 1 of the Government Code.

Subsection (j) is essential to define the term "individualized education program team" or "IEP team" for interagency coordination. This definition is included to assist non-education agency personnel in understanding the nature of the IEP team.

Subsection (k) defines the term "local education agency" or "LEA." This term clarifies for non-education agencies, the local education entities responsible for providing special education and related services.

Subsection (l) clarifies the term "local interagency agreement." Education Code, Section 56220 requires that local education agencies develop interagency agreements to define the process for coordination of services to pupils with disabilities. This definition is included to clarify the need for a written document and to briefly define the interagency process.

Subsection (m) clarifies the term "necessary to benefit from special education" to insure that the primary focus of related services is the pupil's school performance. This definition is included to inform non-education professionals and lay persons about the goal of related services under special education statutes.

Subsection (n) clarifies the term "nonpublic, nonsectarian agency" as defined for educational purposes. This definition is included because the term has had a different meaning in the mental health and social services programs.

Subsection (o) defines the term "nonpublic, nonsectarian school." This definition is included because the term is specific to education law.

Subsection (p) defines the term "parent" according to the statutory change in Government Code, Section 7579.5, to reflect the surrogate parents' responsibilities and clarify that they may legally sign a consent for services. This definition is included to assist non-education agency staff in understanding the educational definition of parent and to assure that pupils have appropriate educational representation at their IEP meeting.

Subsection (q) defines the term "pupil with a disability" by clarifying that it is a synonym of "child with a disability" and the plural "children with disabilities" as defined in the Individuals with Disabilities Education Act, formerly Education of the Handicapped Act. This change in nomenclature applies only to pupils who have IEPs, formerly known as "individuals with exceptional needs." This definition is included to inform non-education agencies about the specified conditions under which a pupil may be designated as a pupil a disability.

Subsection (r) defines the term "qualified" as it is used to describe appropriate personnel providing special education services within their scope of practice. It is consistent with Title 5, Division 1, Chapter 3, Section 3001(x) of the California Code of Regulations. This regulation clarifies that graduate students and interns may provide services if they are properly registered and supervised.

Subsection (s) defines the term "related services" and references the federal law that further defines it, since this is an education term not used by other agencies. Related services also includes the term "designated instruction and services" which education agencies use to describe special education services which assist pupils with disabilities in benefiting from special education.

Subsection (t) defines the term "special education." This definition includes related services and references the pertinent section of the Education Code. This clarification is necessary to inform those local agencies which have the responsibility to provide related services that these services must only be included on the pupil's IEP if they are required in order for the child to benefit from his special education program.

Subsection (u) defines the term "special education local plan" to clarify for non-education agencies, the scope of services to be provided within the service area.

Subsection (v) identifies the area covered by the local plan as the "special education local plan area (SELPA)" within which the special education services are provided. This is the governmental agency financially responsible for assuring the provision of services.

SECTION 60020 MENTAL HEALTH DEFINITIONS

Subsection (a) clarifies the meaning of "community mental health service" as some county mental health departments have contracted with private providers to provide treatment and assessment.

Subsection (b) defines "county of origin" as used by mental health personnel to describe the funding source for children with disabilities receiving mental health services. This definition is included for non-mental health programs where there may be a different criteria for identifying a funding source.

Subsection (c) defines the term "expanded IEP team" and clarifies this team's requirement to assess a pupil in all areas of suspected disability and to implement the placement of children identified as seriously emotionally disturbed in residential placements. This definition is included because local education agencies have been found to be out of compliance for failure to properly constitute an expanded IEP team, and to emphasize that this is a shared agency responsibility.

Subsection (d) defines "host county." The function of the host county is to provide services for children whose "county of origin" is elsewhere. This definition is included for the benefit of local education agencies because it is a mental health term.

Subsection (e) specifies that the "local mental health director" is the responsible agent of the community mental health service.

Subsection (f) clarifies that "medication monitoring" is a service that is provided pursuant to IEPs. It is also necessary to differentiate this service from the actual payment for the medications because this is not an allowable service under the special education pupils program as it is a strictly medical, and not an educational, service.

Subsection (g) defines the term "mental health assessment." This term clarifies for other agency personnel the nature and scope of mental health assessments as defined by the California Code of Regulations. Section 7576 of Chapter 26.5 of the Government Code requires such clarification.

Subsection (h) defines the term "mental health assessment plan." This definition is necessary to ensure that mental health assessments are conducted in a manner consistent with the requirements of the Education Code.

Subsection (i), which defines the term "mental health services," clarifies the nature and scope of such services, including assessments. Section 7576 of Chapter 26.5 of the Government Code requires such clarification.

Subsection (j), which defines the term "qualified mental health professional," identifies all mental health professionals who may provide mental health services and recommend mental health as a related service on the IEP. It clarifies that properly supervised MFCC and MSW interns may provide mental health services prior to licensure and that some services can be provided by a mental health rehabilitation specialist. It was also necessary to explain that the term "licensed practitioner of the healing arts" refers to a subset of the group defined in this subsection.

SECTION 60025 SOCIAL SERVICES DEFINITIONS

This Section is essential to assist education agencies and mental health programs to achieve a common understanding of terms used by the Department of Social Services in authorizing payment for residential placements for children.

Subsection (a) defines the term, "care and supervision". The public problem is that there are four different agencies involved in this program with potentially four different uses of this term. The specific purpose for the definition is to clearly define the term for the users of the regulations as it applies to CDSS ratesetting requirements for payment purposes. The factual basis for the definition is that the definition of "care and supervision" is consistent with the statutory definition in Welfare and Institutions Code Section 11460.

Subsection (b) defines the term, "certified family home." The public problem is that there are four different agencies involved in this program with potentially four different uses of this term. The specific purpose for the definition is to clearly define the term for the users of the regulations as it applies to CDSS ratesetting requirements for payment purposes. The factual basis for the definition is that the definition of "certified family home" is consistent with the statutory definition in Welfare and Institutions Code Section 11400(c).

Subsection (c) defines the term, "certified, license-pending home." The public problem is that there are four different agencies involved in this program with potentially four different uses of this term. The specific purpose for the definition is to clearly define the term for the users of the regulations as it applies to CDSS ratesetting requirements for payment purposes, as well as for licensing purposes. The factual basis for the definition is the definition of "certified family home" is as set forth in Welfare and Institutions Sections 361.2(h), 727(b), and 16507.5(b), and Health and Safety Code 1502(a).

Subsection (d) is necessary to specify the meaning of a community care facility which is consistent with Health and Safety Code Section 1502(a). The public problem is that there are four different agencies involved in this program with potentially four different uses of this term. The specific purpose for the definition is to clearly define the term for the users of the regulations as it applies to CDSS ratesetting requirements for payment purposes, as well as for licensing purposes. The factual basis for the definition is the definition of "Community care facility" as set forth in Health and Safety Code Section 1502(a).

Subsection (e) defines, "Community treatment facility" as these are new facilities that the demanding population served by this program may need to utilize. It is also necessary to clarify that secure containment, restraint and seclusion are no longer illegal in group homes if they have this designation. The public problem is that there are four different agencies involved in this program with potentially four different uses of this term. The specific purpose for the definition is to clearly define the term for the users of the regulations as it applies to CDSS ratesetting requirements for payment purposes, as well as for licensing purposes. The factual basis for the definition is the definition of "Community treatment facility" is as set forth in Welfare and Institutions Section 4094, and in Health and Safety Code 1502(a)(8).

Subsection (f) defines "foster family agency". The public problem is that there are four different agencies involved in this program with potentially four different uses of this term. The specific purpose for the definition is to clearly define the term for the users of the regulations as it applies to CDSS ratesetting requirements for payment purposes, as well as for licensing purposes. The factual basis

for the definition is that the definition of “foster family agency” is consistent with the statutory definitions in Welfare and Institutions Code Section 11400(g), and in Health and Safety Code Section 1502(a)(4).

Subsection (g) defines “foster family home.” The public problem is that there are four different agencies involved in this program with potentially four different uses of this term. The specific purpose for the definition is to clearly define the term for the users of the regulations as it applies to CDSS ratesetting requirements for payment purposes, as well as for licensing purposes, where applicable.

The factual basis for the definition is that the definition of “foster family home” is consistent with the statutory definition in Health and Safety Code 1502(a)(5), and for small family homes and homes of relatives Education Code Section 56155.5(b), and Welfare and Institutions Code Section 11402(a).

Small family homes and the homes of relatives will rarely be used for placement of these children, but for the few cases that may be able to be placed in these homes they are included in this section.

Subsection (h) defines the term, "group home." The public problem is that there are four different agencies involved in this program with potentially four different uses of this term. The specific purpose for the definition is to clearly define the term for the users of the regulations as it applies to CDSS ratesetting requirements for payment purposes, as well as for licensing purposes. The factual basis for the definition is that the definition of “group home” is consistent with the statutory definition in Welfare and Institutions Code Sections 11400(h) and 17736(b); and Title 22,CCR, Section 80001(g)(1).

Subsection (i) defines the term, "licensed children's institution", for the mental health and social services agencies pursuant to Education Code Section 56155.5. "Licensed children's institutions" is the term used in the Education Code which most approximates the Social Services terms and is currently in use in the education community. The public problem is that there are four different agencies involved in this program with potentially four different uses of this term; this definition helps to clarify what is meant by this term for the purposes of this section. The factual basis for the definition is that the definition of “licensed children’s institution” is consistent with the statutory definition in Education Code Section 56155.5.

Subsection (j) defines the term, "small family home." The public problem is that there are four different agencies involved in this program with potentially four different uses of this term. The specific purpose for the definition is to clearly define the term for the users of the regulations as it applies to CDSS ratesetting requirements for payment purposes, as well as for licensing purposes. The factual basis for the definition is that the definition of “small family home” is consistent with the statutory definition in Health and Safety Code Section 1502(a)(6).

Article 2. Mental Health Related Services

SECTION 60030 LOCAL MENTAL HEALTH AND EDUCATION INTERAGENCY AGREEMENT

Education Code Section 56220 (d) requires that local education agencies describe the process for coordinating services with other public agencies that are funded to serve pupils with disabilities. This description is not required to be submitted to the Superintendent of Public Instruction but is required to be a written statement.

This section sets forth the processes and procedures for determining which agency is responsible for services but will not be legally binding on the parties in excess of the requirements of Chapter 26.5 of the Government Code. This section does not preclude the parties to this local interagency agreement from increasing the scope of the agreement to meet the needs of the community.

This section on local interagency agreements has been expanded because experience in the field has shown that many local interagency agreements are not effective. The proposed requirements update the language to reflect recent changes in the Individuals with Disabilities Education Act of 1990 (reauthorized in 1997) and in state law.

Subsection (a) specifies the participants in the local interagency agreement.

Subsection (b) facilitates the implementation of this Chapter by requiring a review of the interagency agreement annually but allowing more frequent revisions as necessary. These proposed regulations require annual reviews because this program is dynamic and had numerous additional statutory changes. It is necessary for the parties to the local interagency agreement to meet and discuss the necessary changes to the local interagency agreement.

Subsection (c) (provisions 1 through 17) expands and clarifies the topics for inclusion in the required local interagency agreements. These provisions make clear to the parties, the essential components for a local interagency agreement to implement Chapter 26.5 of the Government Code. Practitioners in the field have indicated that the components should be specific in their content.

Local agencies must document and specify the separate and distinct roles of each agency responsible to plan for and provide services to pupils with disabilities pursuant to Section 7572 of the Government Code. The proposed provisions which are required for inclusion in the agreements are topics found to be most misunderstood between the two agencies. The Department of Education and the Department of Mental Health staff have found that those local agencies that included in their agreement such items as assessment, exchange of information, and participation in developing the individualized education program, etc. experienced fewer problems and greater cooperation and coordination.

Local agencies must develop their own agreements based upon the proposed 17 provisions. This provides them the opportunity for flexibility to address specific local problems and needs.

(c)(1) This regulation requires stronger interagency agreements in order to improve local agencies' ability to adhere to the timelines required by law. Recent court cases such as "Butterfield vs. Honig" have underscored the necessity for clearly articulated responsibilities with regard to timelines. Local mental health programs and local education agencies (LEAs) have complained about a lack of clarity with regard to timelines, and disputes and fair hearings have resulted.

(c)(2) Avoiding the interagency dispute resolution process at the state level through resolution of such disputes at the local level will enable services to be provided more quickly and preserve mental health staff and resources for treatment instead of litigation preparation. This provision should assist local interagency cooperation.

(c)(3) The local mental health service must be given a complete referral package by the local education agency in order to accurately assess a pupil. This provision clarifies what exactly must be in the referral package for it to be complete.

(c)(4) The field has identified problems associated with large numbers of probation and social service placed children who have special education and mental health needs. This provision addresses these problems by assigning responsibility to facilitate new referrals when a child with a disability is residentially placed by an agency other than education or mental health and is intended to prevent eligible pupils from being denied services due to their parent's residency in another county.

(c)(5) This regulation ensures that an assessment plan and its implementation are coordinated. This provision is added in consideration of the decision in the "Butterfield vs. Honig" court case. It is expected that this provision will prevent similar complaints in other counties.

(c)(6) This regulation ensures the adequate participation of the mental health professionals at the IEP team meetings and is intended to facilitate interagency cooperation and collaboration.

(c)(7) This regulation requires that adequate notice of scheduled IEPs be provided representatives of local mental health service so that their participation at IEP meetings is facilitated. The field has advised the Department that LEAs sometimes fail to advise the local mental health service of upcoming IEP meetings or give such notice too close to the meeting time for local mental health to attend.

(c)(8) This regulation ensures that the interagency process for developing the IEP is in accordance with Education Code and is explained clearly for workers in the field.

(c)(9) This regulation requires services to be delivered as soon as possible in accordance with federal regulations in order to avoid compliance complaints or lawsuits.

(c)(10) Related services must be provided when school is not in session during vacation periods when they are determined to be necessary by the IEP team. Transportation services are also required to continue during the summer if required by the IEP. The transportation requirement has been included in this regulation due to input regarding the necessity for it from the superior counties who face geographic barriers and who have poor public transportation systems.

(c)(11) This regulation requires that children with disabilities will be able to access their related services in accordance with federal accessibility requirements codified in the Americans with Disabilities Act.

(c)(12) This regulation ensures that schools will provide necessary space and staff support on school campuses for the delivery of related services. Due to class size reduction, space, in particular, on school campuses is a scarce resource.

(c)(13) In accordance with the Department's policy of allowing family participation and choice in their treatment, this regulation requires that pupils with disabilities and their parents be provided more than one option for their special education services. The phrase "continuum of placement options" and the requirement for non-residential, and therefore less restrictive, intervention options are also intended to facilitate family choices in treatment.

(c)(14) This regulation ensures a monitoring system for services on the IEP that are provided by a contractor. The use of contractors is increasing in response to the administration's "California competes" policy, and the need to provide oversight over such contractors is, therefore, increasing as well.

(c)(15) This regulation facilitates the timely completion of assessments through the development of a resource list of contract assessors. This provision is added in consideration of the "Butterfield vs. Honig" decision, and has also been identified by the field as necessary due to increasing county mental health utilization of contract assessors and contract providers of other mental health services. It is anticipated that local agencies will have fewer compliance complaints if they include this provision in their interagency agreements.

(c)(16) This regulation ensures that the purpose for which a child is placed in a residential facility is to accomplish educationally related mental health treatment goals rather than to merely address dysfunctional family dynamics.

(c)(17) This regulation is intended to enhance the ability of education and mental health staff to understand and cooperate with one another because the required cross training teaches an appreciation of the differing perspectives and roles that characterize these different professions.

SECTION 60040 REFERRAL TO COMMUNITY MENTAL HEALTH SERVICES FOR RELATED SERVICES

The proposed regulations for Government Code, Chapter 26.5, Section 7572(c) included in this section are intended to ensure that a complete referral package is prepared by the LEA and forwarded to the community mental health service in a timely manner. This section requires local education agencies to include the necessary components of a referral from the education agency to a mental health program. The requirements in this section conform with Chapter 654, Statutes of 1996.

Subsection (a) clarifies who is responsible for the initiation of referrals for mental health services. For the purposes of Chapter 26.5 related services, it is necessary for a referral to be made by the LEA, IEP team or the parent.

Subsection (a)(1) clarifies that a pupil must have been assessed for special education by qualified education personnel in order to be eligible for related mental health services.

Subsection (a)(2) specifies the requirements that an LEA must comply with in order to refer a pupil to the community mental health service. A consent for referral, release and exchange of information, and permission for observation of the pupil by mental health must all be signed by the parent before a mental health referral can be made in order to protect the parent and pupils right to confidentiality.

Subsections (a)(3) (A, B, C, and D) require a pupil to have significant emotional or behavioral characteristics that are observed by qualified educational professionals in educational and other settings which impede their ability to benefit from special education in order for the pupil to meet eligibility criteria for mental health referral. This subsection also excludes students from mental health referral who are only socially maladjusted or who are experiencing temporary adjustment problems which could respond to short term counseling. These restrictions are necessary to focus services upon a population that needs them and can benefit from them and to ensure that less restrictive interventions are attempted with the pupil prior to mental health involvement.

Subsection (a)(4) requires a LEA to document that a pupil has sufficient cognitive functioning to benefit from mental health services before they may refer them to mental health. This is to prevent wasting scarce mental health resources on pupils who will not experience any increase in educational benefit as a result. In the past it has been common practice for county mental health services to exclude pupils from program eligibility who had an onset of their mental health problems prior to 30 months. This excluded developmentally disabled, and autistic children from receiving services on the basis of their diagnosis. This is contrary to IDEA which mandates that pupils must be considered for services on a case by case basis and not solely by their diagnosis. This practice is also inconsistent with the legal precedent set by the "Rachel H." case which has included the developmentally disabled in mainstream classes and schools, and, as a result, more pupils with developmental disabilities are requesting services from the special education pupils program. Programs currently exist in San Francisco and Ventura counties specifically designed for autistic children in spite of the past practice of exclusion

utilized by many counties, and these programs are effectively ameliorating these pupils problems. These programs invalidate the argument in support of excluding all developmentally disabled and autistic pupils from the program because they lack the cognitive capacity to benefit from services.

Subsection (a)(5) requires a LEA to attempt and document less restrictive interventions with a pupil before referring them for mental health intervention. This section clarifies that a LEA is expected to provide assessments and designated instructional services within the educational system unless these interventions are clearly insufficient, as in the case of a pupil who experiences a psychotic break. In this latter case the LEA is required to document the reasons for not attempting less restrictive interventions in the mental health referral. The Department hopes to strengthen and encourage the use of the least restrictive effective intervention through these requirements.

Subsections (b) (1-4) explain the documentation which the LEA must provide the community mental health service when they refer a pupil. This documentation includes the IEP, assessments, and information from other agencies that the LEA possesses, the parents' consent for treatment, the less restrictive interventions attempted, and a description of the behaviors that make the pupil eligible for mental health treatment.

Subsections (c)(1 and 2) allow a LEA to make a referral to a community mental health service before the education assessments are completed provided that the information on these assessments documents that the pupil meets the eligibility requirements established in subsections (a)(2-4) and provided that the LEA has attempted less restrictive and reasonable accommodations to the student by utilizing related educational services and designated instruction and services such as school counseling, guidance, resource special programs, and psychological services. This section is an attempt to address complaints that parent advocates and protection and advocacy raised in the work group that a "double timeline" exists for pupils who need mental health services because they have to wait up to 65 days (15 days for an assessment plan and 50 for an assessment) for the LEA and for the community mental health service to assess pupils. For children who obviously require mental health intervention 130 days is a long time to wait and these subsections allow concurrent referral and therefore will shorten this period of time when appropriate.

Subsection (d), identifies the components of a complete referral package when the referred pupil has not already been determined to be eligible for special education but is merely suspected of being eligible. It is necessary to provide information which is as complete as possible in this instance to the community mental health service. This will facilitate the process for determining the need for a mental health assessment and other mental health services.

Subsection (d)(1), specifies that the results of the educational assessments and any relevant reports from other agencies treating the pupil should be included in the referral package from a LEA to a community mental health service.

Subsection (d)(2), requires the inclusion of parental consent as is required by state and federal law.

Subsection (d)(3), clarifies that the LEA must provide documentation of the pupil's behavioral characteristics that qualify him or her for mental health treatment and is necessary so that community mental health services are not burdened with assessing pupils who are clearly ineligible for services.

Subsection (d)(4), requires that the LEA justify the referral for mental health services by documenting why the less restrictive interventions which have been attempted by education have failed to ameliorate the pupil's behavioral and emotional problems. This is necessary to ensure the pupil's right to be taught in the general population as much as possible and to not overburden the community mental health service with pupils who can benefit from less stigmatizing school services.

Subsection (e) emphasizes that the special education pupils program is not a crisis intervention program and that it will be necessary for parents and LEAs to make referrals to a county's usual crisis service network in the case of psychiatric emergencies. This is necessary to allow time for the required procedures to be followed before providing services so that they will be appropriate and meet the pupil's educational needs. It also clarifies for parents that this is an educational and not medical program.

Subsection (f) requires a community mental health service to accept referrals which meet the standards set by Subsections (a) and (c) and is necessary to clarify for community mental health services that a lack of resources or long waiting lists are not acceptable reasons for not accepting appropriate referrals.

Subsection (g) explains the responsibility of the county of origin to provide or arrange for the pupil's IEP designated mental health services and pay for them. It also describes the responsibility of the host county to immediately forward referrals it receives for assessment or treatment of pupils placed there by another county. Resolving inter-county disputes when pupils are placed out-of-county is a problem for this program well documented in the field. Placements made by probation and social service departments from other counties are particularly problematic in this regard as they frequently do not notify either the school district or SELPA in the sending or the receiving county. Without the clear delineation of responsibilities for this circumstance, program eligible pupils might not receive the services they are entitled to and compliance complaints or requests for mediation and fair hearing could increase as a result.

SECTION 60045 ASSESSMENT TO DETERMINE THE NEED FOR MENTAL HEALTH SERVICES

This Section provides the detailed instructions that are necessary for the implementation of Government Code, Chapter 26.5, Section 7572 with regard to the components of the assessment plan and assessment.

Subsection (a) clarifies the responsibility of community mental health services when conducting

assessments and specifies the time constraints for making the decision to conduct or not conduct mental health assessments. This subsection was requested by local education agencies and community mental health services to prevent misunderstandings resulting from unclear expectations.

Subsection (a)(1) requires the community mental health service to notify parents and the LEA should the community mental health service deem a mental health assessment to be unnecessary. This requirement is consistent with the Department's philosophy of parent participation in treatment decisions because the documented refusal may inform parent's of less restrictive interventions which the LEA can attempt to help the pupil.

Subsection (a)(2) directs the community mental health service to obtain the parent's signature on the mental health assessment plan. This requirement is consistent with "consent for treatment" requirements for any mental health treatment.

Subsection (b) clarifies the time constraints for mental health assessment plans, and ensures that parents will be provided with information about what to expect from the mental health assessment process. It also establishes a standard for community mental health services regarding the components which must be included in the mental health assessment. This subsection is intended to facilitate the assessment process, ensure that community mental health services abide by timelines and ensure that all effected parties are informed when community mental health services agree to assess a pupil.

Subsection (c) is intended to ensure that, if the assessment process is impeded by the lack of parental permission, the LEA or the IEP team shall be advised. This avoids the inappropriate assignment of blame on the community mental health service, and may facilitate obtaining the parental consent or an understanding of why such consent was not granted. This provision may also facilitate a clarification to the parent and pupil of what this lack of consent means in terms of service eligibility.

Subsection (d) is necessary to establish a process to arrive at the date of the IEP meeting which signals the end of the assessment period. It clarifies that the timeline begins the moment that the community mental health receives parental consent to assess, not the moment that the parent signs such consent. This subsection is consistent with Section 56344 of the Education Code.

Subsection (e) is intended to ensure that all parties are alerted to the community mental health service's problem with complying to mandated timelines midway through the IEP process. If the assessment cannot be completed, a waiver of the timeline may be requested of the parent but this subsection clearly establishes that this extension is at the sole discretion of the parent.

Subsections (f)(1) and (f)(2) ensure that the parents and members of the IEP team are appraised of the community mental health service assessor's service recommendations prior to the IEP meeting so that they can have the assessor attend the meeting to discuss them if they disagree. Section (f)(2) provides clarification that this recommendation will be the recommendation of the LEA staff present at the meeting. These requirements are also explained in Section 7572(d)(1) of Chapter 26.5 of the Government Code, but the statute has been repeated here as the statute alone has been unable to

prevent frequent disagreements between LEA staff and mental health staff at IEPs regarding mental health recommendations. The Department's purpose in repealing this statute is to decrease the adversarial nature of such IEPs by putting the relevant statutory requirement in the more frequently referred to proposed regulations. Collaboration may be facilitated by clearly delineating the professional boundaries of the different staff members in the proposed regulations.

Subsection (g) requires the written assessment report to be provided to the IEP team so that, if the assessor is unable to attend the meeting, the other members of the team will be able to add the recommended mental health services to the pupil's IEP.

Subsection (h) ensures that the community mental health service from the pupil's county of origin reassesses the pupil every three years or whenever there is a substantial change in mental health services or a transfer of placement. This is necessary so that services remain appropriate to the changing needs of this population.

SECTION 60050 INDIVIDUALIZED EDUCATION PROGRAM FOR MENTAL HEALTH SERVICES

Subsections (a)(1 - 4), revise many county mental health services' practice of listing services before goals and objectives in order to conform with the practices of the LEAs. This change is necessary to enable the mental health IEP recommendations to be consistent with the form utilized by the schools on IEPs. The previous inversion of the LEA order by the community mental health services was confusing to contract and other service providers in the field and it is the Department's intention for this change to facilitate a more efficient coordination of services.

Subsection (a)(5) implements Section 7572 of Chapter 26.5 of the Government Code and is also consistent with other related California laws. This section requires a signed consent for treatment consistent with current practice and Health and Safety Code. This subsection is necessary because local education agencies were not aware of the statutes which require mental health programs to have signed consents for treatment which are separate from signed IEPs.

Subsection (b) is consistent with Education Code 56221(b)(2) which requires that an IEP be held any time that there is a change in related services from what was written at the last IEP meeting. It is also necessary to inform the parents and schools of this change so that they can consider if other, school based services will be required by the pupil to assist him or her with this change. Community mental health services also requested this provision to document the end of their responsibility for the treatment of a pupil and for any associated risk.

SECTION 60055 TRANSFERS AND INTERIM PLACEMENTS

This section conforms with and implements Education Code Section 56325 which ensures that special education pupils continue to receive services after they transfer into a new school district or SELPA.

This section is intended to address implementation problems in these situations reported by the field in which eligible pupils were denied services due to an inter-county transfer.

Subsection (a) requires the LEA to refer the pupil to the local community mental health service when they move into a new SELPA or county and have mental health services on an existing IEP. This requirement will help ensure the continuation of services pursuant to Education Code 56325 to children with existing IEPs when they move.

Subsection (b) requires local mental health programs to continue 30 day interim services to a pupil with a disability who has been made eligible in one SELPA and moves to another.

Subsection (c) requires that an IEP be convened in the new county to assess what mental health services the pupil continues to need to benefit from his or her special education. This provision will also allow the host county to consider the fit between the pupil's need and the services that they have to offer and will allow the county of origin to negotiate with the host county for scarce resources if necessary. Since counties vary considerably in resources and service philosophy the field felt that this reappraisal was necessary when a pupil is residentially placed outside his or her county of origin.

Article 3. Residential Placement

SECTION 60100 PLACEMENT OF A PUPIL WITH A DISABILITY WHO IS SERIOUSLY EMOTIONALLY DISTURBED

Subsection (a) implements Section 7572.5 of Chapter 26.5 of the Government Code. The duplication of the phrase, "a pupil with a disability who is seriously emotionally disturbed", is necessary to prevent the use of the proposed regulations out of context and to emphasize that, for residential placement to be considered, the pupil must be deemed seriously emotionally disturbed by the LEA.

Subsection (b)(1) requires a representative of the local community mental health service to be assigned to participate on the IEP team. It has been the Department's experience in developing interagency agreements that tasks are seldom completed or even initiated unless a person with delegated authority is assigned to the task. The term authorized means that, rather than a contract provider, a county mental health case manager with the authority to make placement decisions is on the expanded IEP team.

Subsection (b)(2) emphasizes the necessity for an authorized mental health representative to be on the expanded IEP team before this team may make placement recommendations. It requires the IEP team to reconvene if this representative is not present and establishes a timeline for this eventuality in order to ensure that coordination with local mental health can be effected.

Subsection (b)(3) provides county mental health departments with an opportunity to assess a pupil

prior to making a placement recommendation if the pupil is unknown to them.

Subsection (c) implements Section 7572.5 (b)(1) of Chapter 26.5 of the Government Code. It clarifies the mandate that all combinations of less restrictive educational and mental health services shall be attempted and documented, or at least considered, before taking action on a recommendation for residential placement. Not only must the IEP team document the specific alternative interventions considered but also the reason for their rejection.

Subsection (d) requires the expanded IEP team to document the reasons why the services for the pupil cannot be provided elsewhere. Documentation is needed to provide the federally required audit trail to establish that other less restrictive programs were considered.

Subsection (e) specifies that the responsibility for finding the least restrictive, cost effective residential placement alternative is the mental health case manager's. This subsection also clarifies that the mental health case manager must consult with the IEP team's administrative designee when making this determination. The need for a consultation was indicated by the field where conflicts concerning the assignment of financial responsibility for the placements have been a major problem in program implementation. This subsection also borrows some language from AB 2726 at the recommendation of Protection and Advocacy in the work group in order to be in compliance with the recent amendments to Chapter 26.5 pursuant to AB 2726.

Subsection (f) articulates the Department's policy preference for the location of the residential placement to be within or adjacent to the county of the parent's residence unless that is clearly impossible to achieve. This subsection provides a process to treat the pupil in the least restrictive environment and to thereby facilitate the goal of family reunification. It is anticipated that proximity of the family to the pupil will assist in obtaining this goal. Documentation is also required by this subsection to ensure compliance with Section 300.552(a)(3) of the Code of Federal Regulations which articulates that residential placements should be made as close to the pupils' home as possible. In addition, this subsection also cross references the type of placements in which pupils will be placed according to the definitions contained in Section 60025.

Subsection (g) implements Section 18350 of the Welfare and Institutions Code and specifies the type of residential facilities and their educational components that may be funded pursuant to this Chapter. Terms such as "licensed or certified" are essential to conform with the terms currently in use by the Department of Social Services.

Subsection (h) clarifies that placements made out of the state of California will be non-medical and non-detention, and must be certified by the Department of Education. This requirement is necessary to alert members of the IEP team that they must carefully choose placements made out of the state of California and ensure that the residential facility is approved by the State Department of Social Services and the educational facility is approved by the State Department of Education. There is a need for clarification of this issue in these proposed regulations because the Community Care Facilities Act which governs the Social Services' 24-hour out-of-home placements pursuant to Welfare and

Institutions Code, Chapter 6, Section 18350, sets the standard for facilities funded through the Department of Social Services and their local agencies. Welfare and Institutions Code Sections 11460(c)(2) through (c)(3) contain the requirements for the funding of placement by CDSS that are made in out-of-state facilities.

Subsection (i)(1) assures that the specific services and the expected duration they will be required by the pupil are properly written on the IEP to conform with all other IEPs and pursuant to Education Code Section 56345(a)(5). It was determined by the field that a regulatory process is necessary to ensure that community mental health services meet the education requirements described in the written IEPs.

Subsection (i)(2) ensures that the provision of mental health services is by qualified personnel to prevent the recurrence of services being provided by unqualified persons by some contracted agencies in the past.

Subsection (j) requires the IEP team's adherence to the licensed children's institution admission criteria when making their residential placements. The adoption of this section is necessary to specify that the IEP team's recommendations for residential placement must be in accordance with the governing regulations and statutes for the various types of community care facilities for children licensed by the California Department of Social Services. These facilities include group homes, foster family agencies and community treatment facilities as specified in Section 60025(h).

SECTION 60110 CASE MANAGEMENT FOR A PUPIL WITH A DISABILITY WHO IS SERIOUSLY EMOTIONALLY DISTURBED AND IS IN A RESIDENTIAL PLACEMENT

This section implements Section 7572.5 (c)(1-3) of Chapter 26.5 of the Government Code and clarifies the case management responsibilities of local mental health regarding SED pupils in residential placement.

Subsection (a) requires the community mental health service directors to appoint a case manager to facilitate the residential placement of the child.

Subsection (b) addresses the frequent urgency to complete the placement of a child. The mental health program case manager responsible for coordinating placement activities must process necessary paperwork quickly when formulating a placement plan. The IDEA requires that the placement must occur as soon as possible and the Butterfield versus Honig decision reiterated this requirement.

Subsection (b)(1) establishes that the residential placement plan must provide for all of the needs of the pupil as specified on the IEP, not merely those related to mental health.

Subsection (b)(2) clarifies that, although the mental health case manager must plan for the pupil's educational needs, the LEA is ultimately responsible for arranging a way to meet the specific educational needs and any other non-mental health needs of a pupil who is residentially placed. Subsection (b)(3) requires that the expanded IEP team adhere to the admission, continuing stay and

discharge criteria of community treatment facilities. The adoption of this section is necessary to ensure that appropriate placements are made in a community treatment facility. There are many requirements that are unique to a community treatment facility which is a secure facility.

Subsections (c)(1-10) clarify the term "case management" for local education agency personnel and the expanded duties for mental health staff. This language specifies those activities that must be performed by the designated community mental health service case manager in order to meet the responsibilities of the participating agencies.

Subsection (c)(1) specifies the need to convene an IEP meeting to discuss appropriate residential placements pursuant to this Chapter. In the past there has been confusion in the field relating to medical placements.

Subsection (c)(2) implements Government Code Chapter 26.5, Section 7572.5 and federal law relating to the least restrictive environment. The subsection also requires the consultation with the IEP administrative designee to assure that the education agency is in agreement with the placement.

Subsections (c)(3-6) assure that the case managers complete payment authorizations and contracts, plan for the child's return to the community and facilitate enrollment in school.

Subsection (c)(7) outlines the case manager's responsibility to notify the LEA regarding transportation needs.

Subsections (c)(8-10) require contacts as required between the pupil and their case manager in order to provide monitoring of the child's placement, to determine that the residential treatment service remains appropriate, and to complete a case review within six months and at six month intervals after this initial review.

Subsection (c)(11) requires a presentation by the case manager to the interagency placement committee as the case manager will be most familiar with the case and best able to explain the necessity of this placement to the committee.

Article 4. Financial Provision for Mental Health Services, Special Education and Residential Placement

This Article describes the services for which financial support is a necessity.

SECTION 60200 FINANCIAL RESPONSIBILITIES

This Section sets forth the financial responsibilities of each agency providing special education instruction, related services, or residential placement. This is necessary as interagency coordination is complex and the staff of each agency often question who is financially responsible for providing services to children with disabilities. This section implements Section 18350 et seq. of Chapter 6 of the Welfare and Institutions Code.

Subsection (a) clarifies the purpose of this article.

Subsection (b) informs all agencies that parents are not to be charged for services received as a result of an IEP pursuant to Chapter 26.5 or IDEA due to their children's entitlement to a free and appropriate education.

Subsection (c) defines for all users and providers, the financial responsibilities of the community mental health service from the pupil's county of origin for providing mental health related services to pupils with disabilities. This section is inclusive of all IEP related mental health services provided in or out of California whether provided by the community mental health service or by contract. This differs from past program practice when related mental health services were required to be provided within the state of California or paid for by the LEA when in another state. This former prohibition against community mental health service payment for mental health services and case management outside the state of California did not have statutory authority. Chapter 26.5 of the Government Code is silent on the issue of out-of-state related mental health services, such as may be provided in residential placements in other states. This proposed regulation emphasizes the change from past practice by making the community mental health service from the county of origin financially responsible for related mental health services out of state as well as within the state. It also clarifies that the county of origin and not the host county mental health service is financially and programatically responsible. Disputes over these responsibilities have frequently been problematic in the field, especially when pupils are residentially placed by agencies other than mental health or education, and sometimes result in eligible pupils not receiving services. This proposed regulation is intended to resolve this problem.

Subsections (c)(1-2) articulate the responsibilities of the host county to make their provider network known and available to the county of origin and to negotiate over scarce resources. The county of origin may negotiate a rate with a provider of their choosing not on the host counties provider network. This specificity in financial requirements and mechanisms is detailed to prevent failures to provide services to eligible pupils who are placed out of county.

Subsection (d) defines for all users and providers, the financial responsibilities of local education agencies related to the child's IEP and the placement of a child with a disability in a nonpublic, nonsectarian school, both in and out of California.

Subsection (d)(1) is specific to outpatient services and requires that transportation will be provided to these services by the LEA according to the IEP pursuant to Education Code Section 56221(b)(5).

Subsection (d)(2) specifies that the financial responsibility for transportation of the child to and from the child's residential placement site is the LEA's. The field is supportive of this regulation as it will resolve a frequent source of dispute.

Subsection (d)(3) assigns financial responsibility for related services provided by a contract NPS, SELPA, or LEA to the contracting LEA. This subsection also clarifies that education will no longer be paying for related mental health services when a child is placed outside of the state of California as they have in the past by stipulating that the LEA is only responsible for non-mental health related services.

Subsection (e) assigns the responsibility for authorizing payment for board and care to the community mental health service. It is the responsibility of the community mental health service to determine that the residential placement meets all of the criteria established in Sections 18350 through 18356 of the Welfare and Institutions Code. These sections of code also refer to Section 11460 of the Welfare and Institutions Code which state that rates will be established by CDSS, and outline certain requirements in order for facilities to be eligible for payment.

Subsection (f) establishes a process for payments in accordance with Section 18351 of the Welfare and Institutions Code and specifies that county welfare bears the financial responsibility for this payment.

Article 5. Occupational Therapy and Physical Therapy

This Article is necessary to implement Section 7570, 7571, 7572, and 7575 of the Government Code, Chapter 26.5. These regulations reflect field input from a task force composed of parents, educators, therapists and state agencies' representatives.

SECTION 60300 CALIFORNIA CHILDREN SERVICES (CCS) MEDICAL THERAPY PROGRAM DEFINITIONS

This section is proposed to be adopted to provide definitions of the terms used by the California Children Services (CCS) program in describing the Medical Therapy Program in order that persons regulated may clearly understand these terms. The California Department of Education and CCS often times use different terminology to describe similar functions, such as use of “assessment” in education and “evaluation” in CCS terminology. This section is necessary in order to avoid confusion as to the meaning of a term used in CCS and to provide clear definitions to assist educators, parents, and therapists in delivering services to pupils with disabilities who are in public schools. Many of the functions that are required by IDEA and the California Education Code are new to CCS personnel. Since the California Education Code is clearer and more specific than the IDEA, references are made to the California Education Code.

Subsection (a) defines the term “assessment for medically necessary occupational therapy and physical therapy” which is necessary for conforming with Section 56320, et seq., of the Education Code and clarifying that CCS provides occupational therapy and physical therapy that is medically necessary as defined for the CCS program in Title 22, Section 41518.

Subsection (b) defines “assessment plan” which is necessary for meeting CCS’s informed consent requirement and describes the CCS requirement to determine or redetermine medical eligibility for the Medical Therapy Program prior to referring a child for an assessment for the need for therapy. This section also conforms with the requirement of Section 56321 of the Education Code and IDEA for an “assessment plan” which is a new requirement for CCS.

Subsection (c) defines “assessment report for therapy” which is necessary to conform with the requirement of Section 56327 of the Education Code for an assessment report. This is a new requirement for CCS. The assessment report for therapy will convey assessment results to the IEP team to enable the team to coordinate services for the pupil.

Subsection (d) defines the term “California Children Services Panel” which is necessary to clearly identify that this group of medical providers has been approved because they meet CCS program standards for participation. This means that the providers have been determined by the CCS program to have the level of expertise necessary to treat the child’s medical therapy program eligible condition.

Subsection (e) defines the term “dependent county agency” which is necessary to differentiate between local CCS programs that are administered jointly with the state rather than those administered solely by the county.

Subsection (f) defines the term “documented physical deficit” which is necessary to substantiate a pupil’s eligibility for the medical therapy program. Requiring the substantiation of a suspected deficit on the special education referral will assist local education agencies in determining whether to refer a case to CCS.

Subsection (g) defines the term “independent county agency” which is necessary to differentiate between local CCS programs that are administered solely by the county rather than administered jointly with the state.

Subsection (h) is necessary to define the term “medical therapy conference” as an interdisciplinary team meeting where the pupil’s occupational therapy or physical therapy treatments are planned.

Subsection (i) defines the term “medical therapy conference team” which is necessary to identify the members who make up the team. This subsection also provides for the addition of other participants who, with parental consent, may assist in, or with, coordination of the pupil’s medical case management.

Subsection (j) defines the term “medical therapy program eligible conditions” which is necessary to make clear which medical diagnoses are eligible for the CCS Medical Therapy Program services.

Subsection (k) (1-4) defines the term “medical therapy services” which is necessary to specify the range of services included in the term and that these services include treatment, consultation, and monitoring activities. This subsection also clearly explains what activities are included in each of the services.

Subsection (l) defines “medical therapy unit” which is necessary to identify where a medical therapy unit can be located and where the full scope of medical therapy services can be provided.

Subsection (m) defines “medical therapy unit satellite” which is necessary to identify the satellite as an extension of the medical therapy unit. The medical therapy unit satellite is limited in the provision of medical therapy services as it does not host medical therapy conference team meetings or comprehensive evaluations. Some Medical Therapy Units may have more than one satellite located in various public schools within the county.

Subsection (n) defines “medically necessary occupational therapy and physical therapy services” which is necessary for specifying that the CCS program will only approve services when it is determined to benefit the pupil’s medical therapy program eligible condition.

Subsection (o) defines “necessary equipment” which is necessary to clarify which agency is responsible for providing the equipment for delivery of medically necessary occupational therapy and/or physical therapy by Medical Therapy Unit/satellite staff to pupils with Medical Therapy Program eligible conditions.

Subsection (p) defines “necessary space” which is necessary to clarify which agency is responsible for providing the space/facilities needed for the delivery of occupational therapy and/or physical therapy by Medical Therapy Unit/satellite staff to pupils with Medical Therapy Program eligible conditions.

Subsection (q) defines “occupational therapy and physical therapy” which is necessary to specify who can provide or supervise provision of occupational therapy and physical therapy services to pupils with a Medical Therapy Program eligible condition.

Subsection (r) defines “therapy plan” which is necessary to conform with the requirements of Education Code Section 56345 for related services on an IEP and the requirements of medical necessity of the CCS program in accordance with Title 22, Section 41518.

SECTION 60310 LOCAL INTERAGENCY AGREEMENTS BETWEEN CALIFORNIA CHILDREN SERVICES AND EDUCATION AGENCIES

This section is proposed to require cooperation and coordination between the local California Children’s Services programs and local education agencies for the development and implementation of a local interagency agreement. The purpose of the local interagency agreement is to set forth the processes and procedures for coordinating the services for which each agency is responsible under

the requirements of Chapter 26.5 of the Government Code.

Education Code Section 56220 (d) requires that local education agencies describe the process for coordinating services with other public agencies that are funded to serve pupils with disabilities. This description is not required to be submitted to the Superintendent of Public Instruction but is required to be a written statement.

Subsection (a) is necessary to ensure that liaisons are designated by both County Superintendent of Schools and/or SELPA director and the county CCS program in order to share responsibility for ensuring that the local education and CCS programs cooperate and provide needed therapy services to pupils in special education programs.

Subsection (b) is necessary to accommodate the divergent configurations of special education local plan areas that may span multiple counties while CCS is county-specific; and to define a process for collaborative decision making.

Subsection (c) is necessary to insure the development and implementation of the local interagency agreement. This plan requires that participants from the administration of both local agencies meet and jointly agree to the requirements and any other provisions of the local interagency agreement.

Subsection (c)(1) is necessary to specify in the local interagency agreement that one person in each agency will be responsible for coordinating the provisions of the agreement.

Subsection (c)(2) is necessary to assure the referral of appropriate candidates for occupational therapy and/or physical therapy to the CCS medical therapy program.

Subsection (c)(3) is necessary to include the exchange of “educational and medical” information between the LEA and county CCS programs. This provision is necessary to make specific the types of information to be exchanged and assure that the parents consent will be obtained pursuant to 56321(c) of the Education Code and Title 34, Code of Federal Regulations, Section 300.500.

Subsection (c)(4) is necessary to require the LEA to give adequate notice to CCS of IEP team meetings regarding all pupils served by the CCS medical therapy unit.

Subsection (c)(5) is necessary to enable the LEA to convene an IEP meeting when the services provided by CCS to the pupil may be changed. This subsection is required to ensure that services on an IEP will not be discontinued or changed without the participation of the IEP team and the parents pursuant to Education Code Section 56346. The Program Advisory from the Department of Education dated September 6, 1991, numbered SPB 91/92-03, was required by OSEP to bring California Department of Education into compliance in its state plan for special education.

Subsection (c)(6) is necessary to ensure that at the time the local interagency agreement is developed that information is included describing the method of the CCS program’s participation in the IEP.

Subsection (c)(7) is necessary to comply with Section 56321 of the Education Code which requires that related services are a part of the IEP. It also complies with Section 56341 of the Education Code when therapy services on an IEP are amended. In the past, procedures have not been timely and participation in IEP meetings has been inconsistent.

Subsection (c)(8) is necessary to ensure that the interagency agreement will specify who has responsibility for the pupil's transportation when the pupil's educational placement is in a different location than the medical therapy unit and/or medical unit satellite.

Subsection (c)(9) is necessary to ensure communication will occur between the LEA and the county CCS program about proposed new, relocated or remodeled facilities. In the past, unilateral construction, relocation, and remodeling has occurred without proper notification to all the participants resulting in canceled therapy sessions, inconvenience to parents and staff, and the use of inappropriate facilities for providing therapy.

Subsection (c)(10) is necessary to ensure that the interagency agreement will clarify that CCS has priority for the use of the therapy space but to also make provision for allowing the space to be used by the local education agency when CCS is not on-site. When both agencies have therapists employed, it is important to maintain coordination in the use of the medical therapy unit and/or medical therapy unit satellite.

Subsection (c)(11) is necessary to include a provision in the interagency agreement to allow cross-training and coordination of staff development for both agencies which has been requested by both agencies to ensure mutual understanding.

Subsection (c)(12) is necessary to ensure that the interagency agreement will include methods of resolving conflicts prior to escalation of conflicts to the state level.

Subsection (c)(13) is necessary to ensure that the interagency agreements requires an annual review of the local interagency agreement and to keep it current with changes in program needs.

Subsection (d) outlines three additional requirements of local interagency agreements.

Subsection (d)(1) is necessary to ensure that the agreement identifies the local education agency(ies) responsible for providing space and equipment for a particular CCS medical therapy unit and/or medical therapy unit satellite.

Subsection (d)(2) is necessary to ensure that the agreement identifies the local education agency(ies) that have fiscal and administrative responsibility for providing and maintaining space and equipment for a particular medical therapy unit and/or medical therapy unit satellite.

Subsection (d)(3) is necessary to ensure that the agreement identifies the process to change the fiscal and/or administrative responsibility between local education agency(ies) for providing space and

equipment for a particular medical therapy unit and/or medical therapy unit satellite.

SECTION 60320 REFERRAL AND ASSESSMENT

This section is necessary to clarify the application of procedures when the LEA makes a referral to the CCS program for an assessment based on the pupil's documented physical deficit as required by the Education Code and the Code of Federal Regulations.

Subsection (a) is necessary to change the emphasis from a referral for a specific service to a referral for assessment in an area of suspected disability, in conformity with the Title 34, Code of Federal Regulations, Section 300.532(f). There has been conflict between parents who request a specific service for their disabled pupil and local education agencies that believe that the child can be served with alternative methods. The proposed changes require that there be a deficit documented on the referral for special education assessment rather than a request for specific service.

Subsection (b) is necessary to assure that an assessment will be conducted in the area of suspected disability to determine if the service is needed as required by Title 34, Code of Federal Regulations, Section 300.532, even if the pupil is not eligible for CCS or has not been referred to CCS.

Subsection (c) requires that referrals received by the LEA be recorded and sent to CCS, accompanied by 1) a consent form signed by the parents which will allow for the exchange of information between the agencies; 2) the pupil's medical diagnosis and medical information to substantiate a medical therapy program eligible condition; and 3) an application for the CCS program that will assist CCS in making a determination of eligibility for services. The language of this section is necessary to ensure that the CCS program has the necessary information to determine medical eligibility.

Subsection (d) is necessary to clarify requirements for the CCS program to follow up if adequate information is not received to determine program medical eligibility and to notify the LEA that the county CCS program is unable to determine medical eligibility based on the information in the referral and that the patient will be referred for a complete neurological examination to determine eligibility.

Subsection (e) is necessary to ensure that local education agencies are notified within five days when a referred pupil's diagnosis does not qualify them for the CCS medical therapy program in order to avoid delays in the development of an assessment plan by the LEA.

Subsection (f) is necessary to describe the responsibilities of the county CCS program to notify the LEA and the parent of its determination of medical eligibility for the medical therapy program. This section is necessary to ensure that the time lines for performing therapy assessments are understood by all affected individuals.

Subsection (g) is necessary to monitor compliance with time lines to avoid further due process hearings, complaints, and citations from the Office of Civil Rights. This subsection gives both agencies responsibilities for tracking the progress of a referral, assessment, and IEP.

Subsection (h) is necessary for defining the role of county CCS programs in providing assessment information to the IEP team when it has been determined that the pupil requires medically necessary occupational therapy and/or physical therapy.

Subsection (i) is necessary to assure that all agencies are complying with the IDEA of 1990.

SECTION 60323 MEDICAL THERAPY PROGRAM RESPONSIBILITIES

This section is proposed to delineate the processes and responsibilities of the medical therapy program.

Subsection (a) is necessary to describe who is responsible for assessing the medical necessity of occupational therapy and/or physical therapy and what is the basis for this determination.

Subsection (b) is necessary to ensure that therapy plans are reviewed for appropriate content by the medical therapy conference team.

Subsection (c) is necessary to ensure that therapy plans are approved by the medical therapy conference team and that all medical therapy prescriptions are subject to review by the medical therapy conference team physician.

Subsection (d) is necessary to identify that only physicians of the appropriate specialty and approved by the CCS program may write medical therapy prescriptions for pupils eligible for the medical therapy program.

Subsection (e) is necessary to explain how medical necessity will be determined when there is no medical therapy conference available.

Subsection (f) is necessary to specify that medical therapy services can only be provided by or under the supervision of a registered occupational therapist and/or licensed physical therapist. Also, it delineates therapy services that will not be provided by the Medical Therapy Program staff.

SECTION 60325 INDIVIDUALIZED EDUCATION PROGRAM FOR THERAPY SERVICES

This section is proposed to specify the steps that are required in the IEP process that are specific to the coordination of CCS and LEA for the provision of medically necessary occupational therapy and/or physical therapy services. This section is necessary to ensure consistency with other IEP processes.

Subsection (a) (1-5) is necessary to comply with the Education Code Section 56345 (a)(1-6) so that all information provided by county CCS programs to IEP teams will be complete and consistent, containing information on the pupils' level of function and the services that will be provided.

Subsection (b) is necessary to ensure CCS participation in the IEP process.

Subsection (c) is necessary to define conditions and the time frame under which the IEP team must be notified by the county CCS program that changes are being made to related services so that the IEP team can be convened to make the needed modifications to the affected pupil's IEP.

Subsection (d) is necessary to define the circumstances under which the IEP team shall be convened. This subsection is necessary to conform with the Education Code Section 56343.

Subsection (e) is necessary to ensure an IEP team review determine if there is a need for an alternative service when a pupil is not eligible for services from CCS or if the service is no longer considered medically necessary.

Subsection (f) is necessary to ensure services that are determined necessary by the IEP team are included into the IEP and are provided by qualified personnel pursuant to Title 5, California Code of Regulations, Section 3051.6 and are noted on the IEP.

SECTION 60330 SPACE AND EQUIPMENT FOR OCCUPATIONAL THERAPY AND PHYSICAL THERAPY

This section is being proposed to clearly identify the responsibility of the LEA to provide space and equipment for medical therapy units and/or medical therapy unit satellites for the provision of medical therapy services to pupils in a public school environment.

Subsection (a) is necessary to identify specific functions of the medical therapy unit and/or medical therapy unit satellite that requires space and equipment. It clearly identifies that the specific amount of space and equipment is determined jointly according to county CCS program need.

Subsection (b) is necessary to assure that CCS has priority for the space and equipment in the medical therapy unit and/or medical therapy unit satellites but that the use of the space and equipment can be negotiated for use by the LEA when CCS staff is not present.

Subsection (c) is necessary to ensure that any decision about space and equipment, including the new construction, relocation, remodeling, and equipping of the medical therapy unit and medical therapy unit satellites must be mutually decided.

Article 6. Home Health Aide

SECTION 60400 SPECIALIZED HEALTH AIDE

This section is being proposed to identify when the State Department of Health Services is responsible for providing the services of a home health aide in the school to pupils with disabilities.

Subsection (a) (1-2) is necessary to clearly specify that the State Department of Health Services is responsible for the provision of home health aide services or services provided by specially trained personnel in the school to pupils with disabilities who are eligible for Medi-Cal.

Subsection (b) is necessary to define “life supporting medical services” so that those who are regulated shall understand what is meant by this term.

Subsection (c) is necessary to acknowledge that the State Department of Health Services shall determine the appropriate level of care that pupils with disabilities who are eligible for Medi-Cal may receive in the school.

Article 7. Exchange of Information Between Education and Social Services

This article is essential to describe the participation of the Department of Social Services in Chapter 26.5 of the Government Code.

SECTION 60505 COMMUNITY CARE FACILITIES

This section is essential to implement Section 7579 and 7580 of Chapter 26.5 of the Government Code.

Subsection (a) is essential to make specific the content of written information to be exchanged between the Department of Social Services and the Department of Education. It is required that the Department of Social Services biannually provide a rates list of group homes and foster family agencies to the Department of Education to comply with the requirement for consultation and exchange of information pursuant to Section 7580 of Chapter 26.5 of the Government Code. This subsection is proposed as a result of the use of the emergency regulations which were found to be unworkable and impractical because they gave substantial responsibility to Community Care Licensing at the local level but never communicated this to the local level. Lists of proposed licensees, half of which are never granted licenses, are not useful to school districts. The emergency regulation requirements were ignored by the field as they imposed a significant burden on the Department of Social Services. Biannual rates lists of actual licensees are useful to school districts to assist in the placement of children. The responsibility for the exchange of information has been changed to the state level which then is made available to the local level through the education system.

Subsection (b) is essential to notify agencies other than education, that the Superintendent of Public Instruction has a responsibility to inform counties of the residential options in their counties. This is a responsibility described in the Education Code Section 56156 which corresponds with the consultation requirements of Government Code Section 7580.

Subsection (c) is essential to notify county superintendents to provide special education local plan administrators with the list of currently licensed children's institutions pursuant to Education Code

56156 that will coordinate with the list available from the Department of Social Services.

Subsection (d) is essential to provide notification of special education contact persons to directors of licensed children's institutions. This information should be available at any time from the special education local plan area administrators to facilitate communication and appropriate placements.

Subsection (e)(1) is essential to describe the types of educational information special education local plan areas are responsible to provide for the group or small family homes and to communicate with the social services agencies regarding the scope of the educational services.

Subsection (e)(2) is essential to notify the licensees that the local education agencies may not be able to respond immediately to appropriately meet the needs of a large number of new disabled students.

The emergency regulations required a 15 day notification of the available special education services for the applicants for a Community Care license. This requirement is deleted because it imposed an unnecessary burden on the field and was beyond the scope of the statute.

SECTION 60510 PRIOR NOTIFICATION

This section is essential to implement Section 7579 of Chapter 26.5 of the Government Code. It was inadvertently omitted from the emergency regulations. This omission is now being corrected with the following subsections by request of the field. Nothing in this section will hinder or prohibit the residential placement of a child with a disability.

Subsections (a)(1-8) are essential to effect a notification from an agency other than education to the local education agency prior to the residential placement of a pupil with disabilities in a licensed, or certified, license-pending home and before an educational placement is assured. Appropriate educational programs may not be available in all locations in California. This process for prior notification has been successfully implemented by the Department of Developmental Services for its Regional Centers. This information is available to the placing agents and will expedite the appropriate educational and residential placement of the child with a disability. The lack of information has been a serious problem in making appropriate educational placements and was requested by the field.

Subsection (b)(1) is essential to inform educational administrators of their responsibility to provide information to other agencies regarding the availability of residential and educational services and to affirm the authority of the IEP team. This has been a communication problem between agencies resulting in children being placed in rural areas in which services are unavailable or too far from the residence for the children to access.

Subsection (b)(2) is essential to prevent the unilateral placement of children in inappropriate or more restrictive educational settings which may provide an appropriate residential setting. This has been a significant and very costly problem for pupils with disabilities who are seriously emotionally disturbed and has resulted in some out of state placements.

Subsection (b)(3) is essential to affirm the authority of the IEP team and to prevent the public agency other than education from unilaterally making the decision regarding the child's special education placement.

Article 8. Procedural Safeguards

This Article is required by Sections 56501-56507 of the Education Code and Section 7586 of the Government Code and is essential to set forth the procedures of the procedural safeguards for agencies other than education that may be involved in hearings. The changes in this section from the emergency regulations are technical and non-substantive.

SECTION 60550 DUE PROCESS HEARINGS

The changes in this section reflect the deletion of the Office of Administrative Hearings from the hearing process. The due process hearings are now conducted by a contract agency.

Subsection (a) is essential to describe the situation in which a due process hearing is applicable pursuant to Education Code Section 56500 et seq.

Subsection (b) is essential to describe the steps in the mediation process and the right to waive mediation pursuant to Section 56503 of the Education Code.

Subsection (c) is essential to notify parents and all agencies that an impartial hearing officer will conduct the hearing pursuant to Section 56505 of the Education Code should mediation be waived or fail to resolve the dispute.

Subsection (d) is essential to inform staff of all agencies of their responsibilities for preparing documentation and providing testimony supporting their position in a due process hearing.

Subsections (e)(1-2) are essential to clarify the responsibilities of the hearing officer. Previous experience in the implementation of the emergency regulations for Chapter 26.5 of the Government Code has proven that the language of the Government Code, Section 7575 must be included in the regulations.

Subsection (f) is essential to clarify that the hearing decision is the final administrative decision.

Subsection (g) specifies that the Department of Social Services' statutes and regulations relating to revocation and temporary suspension of a community care facility supersede all other department's regulations contained in this chapter. Specifically, CDSS has the authority to initiate, continue, and complete a revocation or temporary suspension action, pursuant to Health and Safety Code Sections 15050 and 15050.5, even if a stay put order is requested pursuant to 20 U.S.C. Section 1415(e). The adoption of this subsection is necessary to prevent an issuance of a stay put order in instances where a parent disagrees with a CDSS action to revoke or temporarily suspend or revoke a CCF

license resulting in removal of their child from a particular facility and files a due process hearing, to enjoin the “change in educational placement” (stay put order) as prescribed in Section 56505(d) of the Education Code (pursuant to 20 U.S.C. Section 1415(e)). In such cases the stay put process interferes with CDSS responsibility to protect the health and safety of children in care. A temporary suspension order may only issue where the action is urgent and necessary to protect the health and safety of clients from physical or mental abuse, or other substantial threat to the client’s safety. (See *Habrun v. State Department of Social Services* (1983) 145 Cal. App.3d 318.) The grounds for issuance of a Temporary Suspension Order usually focus on physical or sexual abuse of clients, the failure of a facility to maintain a fire clearance and criminal activity. A revocation is initiated on similar, yet not expedited, bases. This issue was litigated in *Corbett v. Regional Center of the East Bay, Inc.* (N.D.Ca. 1988) 699 F. Supp. 230. The District Court stated that the CDSS possessed the authority to continue with a licensing revocation against a group home although the court issued a stay put order concerning a client in care. The court stated that the CDSS had the authority to proceed with the revocation action based on legitimate health and safety concerns. (Corbett, at p. 232.) The inability of the CDSS to temporarily suspend a facility’s license would infringe upon the integrity of the licensing program by allowing children to reside in facilities that represent an immediate threat to the child’s health and safety. In addition, because only facilities that house SED children would be subject to application of a stay put order for both revocations and TSOs, SED children would be treated differently and subject the State to claims of violation of equal protection and violations under Americans with Disabilities Act and federal and state Fair Employment and Housing (discrimination based on disability).

Subsection (h) specifies that the Department of Social Services, Community Care Licensing's community treatment facility regulations concerning discharge of a pupil, supersede all other department's regulations contained in this chapter. The adoption of this section is necessary to prevent an issuance of stay put order in instances where a parent disagrees with the IEP's assessment recommending a change in the educational placement and files a due process hearing (stay put order) as prescribed in Section 56505(d) of the Education Code. The IEP team is involved in determining when a child is clinically appropriate for discharge and that the level of care and services of a community treatment facility are no longer necessary. The stay put process violates the Constitutional and Due Process rights of the children who are placed in a secured facility. When children are placed in a secured facility they must be afforded due process protection as set forth in *In re Roger S.* and *In re Michael* and their progeny. These rights of children which protect them from unreasonable restraint and deprivation of personal liberty supersede the parental right to direct the education of their children. Therefore, the stay put procedure has no bearing on the discharge of a child in a secure facility who otherwise does not meet the continued stay criteria. Furthermore, the Department of Education does not have jurisdiction to make these determinations.

Subsection (i) is essential to clarify that the California Department of Education is financially responsible to contract for the mediator and hearing officer.

SECTION 60560 COMPLIANCE COMPLAINTS

This section is separated from the due process section because of its unique function and the recent revision in the California Code of Regulations, Section 4650 et seq. of Title 5.

This section is essential to clarify the provisions of procedural safeguards and to alleviate the confusion in the field about due process procedures and the complaint process. This section is essential to implement Section 7585 of Chapter 26.5 of the Government Code.

Subsection (a) references the California Code of Regulations in order to provide an essential explanation to all state and local agencies providing related services to pupils with disabilities the conditions under which a compliance complaint is filed and resolved.

Article 9. Interagency Dispute Resolution

SECTION 60600 APPLICATION OF PROCEDURES

This Section is essential to specify the procedures that are necessary when there is a disagreement between agencies. There have been major disagreements between the state agencies and their local counterparts as to the operation of Section 7575 and 7576 of the Government Code.

Subsection (a) is essential to clarify for the Education and Health and Welfare Agencies and their local counterparts that these procedures apply to the resolution of agency disputes concerning the provision of services on a pupil's IEP. They also apply when the decision of the hearing officer or mediator is disputed by the effected agencies.

Subsection (b) is essential to define "dispute" as it applies to interagency responsibilities and to delineate the materials necessary to be included in the request for interagency dispute resolution.

Subsection (c) is essential to inform the educational staff that if an education agency places services on a child's individualized education program that are the responsibility of another agency, the education agency is then responsible for providing those services.

SECTION 60610 RESOLUTION PROCEDURE

Subsection (a) is essential because the federal government does not allow interagency dispute resolutions to interfere with the delivery of the special education and related services which are on the pupil's individualized education program.

Subsection (a)(1) is essential to ensure that the pupil is provided with as much continuity of care as is possible during the pendency of the dispute resolution by requiring the agency that had been delivering the disputed service to continue or resume providing it to the pupil. This regulation also ensures that funding for the service will be provided.

Subsection (a)(2) is essential to assign responsibility for provision of services during dispute resolution to the LEA if no agency had been providing the service.

Subsection (a)(3) is essential to allow arrangements other than those specified in (a)(1) or (a)(2) to be made by mutual agreement between the involved agencies.

Subsection (b) is essential so that all participating agencies and the public are alerted that disputes must be resolved in a timely manner.

Subsection (c) is essential to clarify for all participating agency staff, the financial responsibility of each agency once the dispute has been settled. This language was requested by education, health, and social service agency staff in order to delineate agency financial responsibilities as a component of the dispute resolution.

Subsection (d) is essential to inform all involved parties of their responsibility to notify the other parties of the conclusion of the dispute resolution. This has been a compliance issue and is included by request of all agencies.

Subsection (e) is essential to set forth timelines for the completion of the dispute resolution process as required by the Individuals with Disabilities Education Act of 1990. This subsection was included as a result of experience gained in the use of the emergency regulations by agencies that were involved in the dispute resolution process and were not notified of the resolution in a timely manner.

c) Identification of Documents Upon Which Department Is Relying

AB 3632, Chapter 1747, Statutes of 1984

d) Testimony and Response

[To be completed after Public Hearing.]

e) Local Mandate Statement

The Departments (California Departments of Education; Mental Health; Health Services (California Children Services and Medi-Cal Programs); and Social Services) have determined that the regulations impose a mandate on local mental health service agencies to serve eligible special education pupils.

These may require state reimbursement under Section 1756 of the Government Code. These regulations also impose a mandate on school districts to serve special education pupils in the least restrictive manner possible and to refer pupils who appear to need mental health services to the community mental health service. Additional expenditures for medical therapy services which are not reimbursable by the State will be financed from the county share of CCS.

f) Statement of Potential Cost Impact on Private Persons or Businesses and of Alternatives Considered

The Departments have determined that there is no fiscal impact on private persons or businesses. However, the regulations may increase California's ability to compete with providers from other states since the proposed regulations will cause mental health agencies to more actively seek in-state providers of residential services.

The Departments have determined that no alternative considered would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected persons than the proposed action.